

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Order of
Conditional License and Order to
Forfeit a Fine Against the Family Child
Care License of Glenda Larson

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

This matter came on for a telephone hearing before Administrative Law Judge (ALJ) Richard C. Luis at 9:30 a.m. on November 2, 2006. The hearing record closed on that day.

Michelle C. Winkis, Chief Assistant Clay County Attorney, Clay County Courthouse, 807 – 11th Street North, P.O. Box 280, Moorhead, MN 56561-0280, appeared by telephone on behalf of Clay County Social Services (“Clay County”) and the Department of Human Services (“Department”).

Glenda Larson (“Licensee”), 5803 Elm Street North, Moorhead, MN 56560, appeared by telephone on her own behalf.

STATEMENT OF ISSUE

Should the Order to Forfeit a Fine in the amount of \$1,000 against the family child care license of Glenda Larson be affirmed?

The Administrative Law Judge concludes that it should.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee is a resident of Moorhead, Minnesota and licensed as a family child care provider in Clay County. She conducts her daycare business out of her home.

2. In the fall of 2005, Licensee and her family got a new puppy, Gracie. Licensee has a fenced backyard in which the dog can play and that she uses as part of her daycare.

3. On or about November 1, 2005, Licensee and the seven day care children were playing out in the backyard. Gracie was also outside. A four-month-old girl, A.W., had fallen asleep in her stroller out in the yard. At some point, one of the children inadvertently let Gracie out of the yard and the dog began to run away. Licensee called after Gracie, but the dog did not respond to the commands to come back to the yard.^[1] Licensee immediately telephoned her husband and then her mother, both of whom were Licensee's day care substitutes, to come and assist her with the children or to catch the dog.^[2] When she was not able to reach either of her substitutes, Licensee pushed A.W. and the stroller into the house, grabbed the baby monitor, and locked the doors to the house. Licensee then put the other six children, ranging in age from 16 months to four years, into her vehicle. She secured the children with seatbelts, not car seats.^[3] Licensee then drove away from the house approximately 6 blocks to one mile and was able to retrieve Gracie and get her into the vehicle. Licensee and the children returned home within minutes of leaving. A.W. was still asleep in her stroller in the house and unharmed.

4. On November 1, 2005, Clay County Social Services received a report that a 4-month-old child had been left unsupervised in Licensee's daycare.^[4] The following day, Clay County Child Protection opened an assessment of the incident.^[5]

5. On November 3, 2005, two Clay County workers visited Licensee at her home and questioned her about the incident. Licensee acknowledged that what she had done was wrong and that she reacted without thinking through the possible consequences. The licensing worker issued a Correction Order to Licensee citing a lack of supervision under Minn. R. 9502.0315, subp. 29a, and a failure to transport children with proper restraints pursuant to Minn. R. 9502.0435, subp. 9.^[6] Licensee signed the Correction Order and posted it in her day care. She informed the licensing worker that the children would never be left unattended again and that she had purchased a lock for the gate in the backyard.^[7]

6. Clay County completed its child protection assessment on November 21, 2005, and found that maltreatment had occurred in the form of lack of supervision, and that on-going services were not needed.^[8] The County found that the maltreatment was not serious or on-going.

7. By letter dated December 14, 2005, Clay County recommended to the Department that Licensee's child care license be made conditional based upon the findings of the child protection assessment and the correction order.^[9] The County informed Licensee of its recommendation to the Department by letter that same day.^[10]

8. Clay County formalized its child protection assessment in a letter to Licensee dated December 23, 2005.^[11] The letter informed Licensee of her right to request reconsideration of the neglect determination, which she did not do.

9. By letter dated January 4, 2006, Clay County recommended to the Department that no fine be imposed on Licensee because the County's recommendation for a conditional license was based on a lack of supervision and failure to properly transport the children, and not on the finding of maltreatment.^[12]

10. On August 1, 2006, the Department issued an Order to Forfeit a Fine and Order of Conditional License to Licensee.^[13] The Order to Forfeit a Fine in the amount of \$1,000 was based on the maltreatment determination under Minn. Stat. § 626.556.^[14] The Order for Conditional License was based on Licensee's supervision and transportation violations. The one-year conditional license required Licensee to, among other things, submit a detailed supervision plan for the children in her care, complete six hours of passenger restraint training in addition to her annual training requirements, and provide a copy of the Order for Conditional License to the parents of the children in her care.^[15] The Order also informed Licensee of her right to request a contested case hearing.

11. In a letter dated August 8, 2006, Licensee appealed the \$1,000 fine. She did not appeal the conditional license.^[16]

12. Several of Licensee's daycare parents submitted letters of support on her behalf to the County, including the parents of the child, A.W., who was left unsupervised.^[17]

13. On September 27, 2006, the Department served a Notice of and Order for Hearing on the Licensee, setting the hearing for November 2, 2006, before the undersigned Administrative Law Judge.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper and timely notice of the hearing in this matter. The Department has complied with all relevant procedural requirements.

3. Minn. Stat. § 245A.06, subd. 1 states:

(a) If the commissioner finds that the . . . license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to . . . the license holder. When issuing a conditional license, the commissioner shall

consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. . . .

4. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to consider “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights” of persons in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

5. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Specifically, subd. 3(c)(4) states that a license holder shall be fined “\$1,000 for each determination of maltreatment of a child under section 626.556. . . .”

6. Supervision is defined as “a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child.”^[18]

7. Minn. R. 9502.0435, subp. 9 states that a child may be transported only if fastened in a safety seat, seat belt, or harness appropriate to the child’s weight and used in accordance with the manufacturer’s instructions. Children under the age of four may only be transported if fastened in a federally approved child passenger restraint system.

8. The burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the licensees failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the licensee to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.^[19]

9. Clay County and the Department have demonstrated reasonable cause to show that the Licensee has failed to comply fully with the law and rules cited above. The Licensee has not demonstrated by a preponderance of the evidence that she was in full compliance with those statutes and rules at the time the Commissioner alleges the violations occurred.

Based on these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner AFFIRM the Order for Conditional License and Order to Forfeit a Fine in the amount of \$1,000.

Dated this 4th day of December, 2006.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Taped, one tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Cal Ludeman, Acting Commissioner, Appeals and Regulations Division, PO Box 64941, St. Paul, MN 55164-0941, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The facts of this case are not disputed. Licensee admits that she left the child A.W. unsupervised in the house while she took the other children to find her dog Gracie and that the baby monitor was likely out of range. She also admits that not all of the children were properly restrained in the vehicle during the short drive to find the dog. Furthermore, she did not request reconsideration of the maltreatment finding. Licensee does not dispute the conditions placed on her family child care license.

Licensee argues that a fine in the amount of \$1,000 is excessive in this situation, that she has learned a lesson, and that such an incident will never happen again. Furthermore, even the County licensing worker recommends against a fine in that amount.

Minn. Stat. § 245A.07, subd. 3(c)(4) addresses the exact situation that occurred in this case. When the Department determines that a licensee has maltreated a child under Minn. Stat. § 626.556, the Commissioner must impose a fine of \$1,000. The fine is appropriate and should be affirmed.

R. C. L.

^[1] Exhibits 5 and 7.

^[2] Ex. 5.

^[3] Ex. 5.

^[4] Exs. 5 and 7; testimony of Karen Hellum.

^[5] Ex. 5.

^[6] Ex. 4.

^[7] Ex. 7.

^[8] Ex. 5.

^[9] Ex. 7.

^[10] Ex. 6.

^[11] Ex. 8.

^[12] Ex. 9.

^[13] Ex. 3.

^[14] Ex. 3.

^[15] Ex. 3, p. 4.

^[16] Ex. 1.

^[17] Ex. 2.

^[18] Minn. R. 9502.0315, subp. 29a.

^[19] Minn. Stat. § 245A.08, subd. 3(a).